

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 TERREL DURR,

Case No.: 2:22-cv-00732-JAD-NJK

4 Petitioner

**Scheduling Order**

5 v.

6 WARDEN HIGH DESERT STATE  
7 PRISON, *et al.*,

8 Respondents  
9

10 On October 5, 2022, I granted 28 U.S.C. § 2254 habeas corpus petitioner Terrel Durr's  
11 request to appoint counsel and appointed the Federal Public Defender to represent the petitioner.<sup>1</sup>  
12 Because Laura Barrera and Ron Y. Sung of the Federal Public Defender's Office have now  
13 appeared on behalf of the petitioner,<sup>2</sup>

14 IT IS ORDERED that counsel for petitioner must meet with the petitioner as soon as  
15 reasonably possible to:

- 16 (a) review the procedures applicable in cases under 28 U.S.C. § 2254;  
17 (b) discuss and explore with petitioner, as fully as possible, the potential grounds for  
18 habeas corpus relief in petitioner's case; and  
19 (c) advise the petitioner that all possible grounds for habeas corpus relief must be raised  
20 at this time and that the failure to do so will likely result in the omitted grounds being barred  
21 from future review under the rules regarding abuse of writ.

22  
23 <sup>1</sup> ECF No. 9.

<sup>2</sup> ECF Nos. 10, 11.

1 IT IS FURTHER ORDERED that counsel for petitioner must file an amended petition for  
 2 writ of habeas corpus within **90 days**, which includes all known grounds for relief (both  
 3 exhausted and unexhausted).

4 IT IS FURTHER ORDERED that respondents must file a response to the petition within  
 5 **90 days** of service of the petition. Petitioner will then have **45 days** from service of the answer,  
 6 motion to dismiss, or other response to file a reply or opposition. Any other motions will be  
 7 subject to the normal briefing schedule under the local rules.

8 Any response to the petition must comport with Habeas Rule 5. Additionally:

- 9 1. Any procedural defenses raised by respondents in this case must be raised together in a  
 10 single, consolidated motion to dismiss. In other words, the court does not wish to address  
 11 any procedural defenses raised herein either in seriatum fashion in multiple successive  
 12 motions to dismiss or embedded in the answer. Procedural defenses omitted from the  
 13 motion to dismiss will be subject to potential waiver.
- 14 2. Respondents must not file a response in this case that consolidates their procedural  
 15 defenses, if any, with their response on the merits, except under 28 U.S.C.  
 16 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
 17 dismissal of unexhausted claims under § 2254(b)(2): (a) they must do so within the single  
 18 motion to dismiss, not in the answer, and (b) they must specifically direct their argument  
 19 to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d  
 20 614, 623–24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion,  
 21 should be included with the merits in an answer. All procedural defenses, including  
 22 exhaustion, must instead be raised by motion to dismiss.
- 23 3. In any answer filed on the merits, respondents must specifically cite to and address the

1 applicable state-court written decision and state-court record materials, if any, regarding  
2 each claim within the response as to that claim; and

- 3 4. Respondents must file a set of state court exhibits relevant to the response filed to the  
4 petition. Those exhibits must be filed chronologically and be accompanied by a separate  
5 index of exhibits identifying the exhibits by number. The CM/ECF attachments that are  
6 filed must be identified by the number or numbers of the exhibits in the attachment. The  
7 purpose of this provision is to allow the court and any reviewing court thereafter to  
8 quickly determine from the face of the electronic docket sheet which numbered exhibits  
9 are filed in which attachments.
- 10 5. Respondents must send a hard copy of all pleadings and indices of exhibits **ONLY** filed  
11 for this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed to the  
12 attention of “Staff Attorney” on the outside of the mailing address label.

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14  
15 U.S. District Judge Jennifer A. Dorsey  
November 15, 2022